

REMARKS/ARGUMENTS

Claims 1-14 are active in this application. Claim 2 has been amended to delete the word “of”, correcting a minor grammatical error. This amendment requires no further consideration and/or search and its entry after final is respectfully requested. No new matter has been added by this amendment.

The present invention relates to a moulding composition, comprising

- a) from 50 to 99.9% by weight of a matrix composed of a thermoplastic polymer and
- b) from 0.1 to 50% by weight of a matting agent in the form of a (meth)acrylate copolymer dispersed in the matrix.

The matting agent is a (meth)acrylate copolymer which has been prepared from the following monomers,

- b1) from 50 to 95% by weight of methyl methacrylate
- b2) from 5 to 50% by weight of C₁-C₆-alkyl acrylates
- b3) from 0.01 to less than 0.5% by weight of a crosslinking monomer and/or graft-linking agent having two or more ethylenically unsaturated radicals capable of free-radical polymerization,
- b4) from 0 to 20% by weight of one or more other, non-crosslinking ethylenically unsaturated monomers capable of free-radical polymerization.

In particular, the entirety of the constituents b1) and b2) and, where appropriate, b3) and/or b4) gives 100% by weight, thus indicating that within the matting agent, there are no other components. Further, the glass transition temperature T_{mg} of the matting agent is at least 20°C.

Claims 1-4 and 6-12 stand rejected under 35 U.S.C. 102(e) or under 35 U.S.C. 103 over Yang et al ‘612. The compositions of Yang ‘612 all require the use of a crosslinked

polymer dispersed in a polymeric matrix, where the crosslinked polymer must contain a filler. In particular, column 5, lines 16-65 describe the inert filler and specifically state that the amount of filler contained in the crosslinked polymer is from 0.1 to 15%, preferably from 0.2 to 10% and more preferably from 0.3 to 5% by weight of the crosslinked polymer. However, that is not possible in the present invention as claimed. In particular, the present claims require that the matting agent contain components b1, b2, b3 and optionally b4, wherein the total of b1, b2, b3 and b4(if present) must equal 100%. That specifically excludes the presence of other components within the matting agent, beyond those specifically listed, thus excluding the presence of a filler.

The Examiner has stated that because the claim recites “comprising”, that this fails to exclude other constituents. While this is generally the case, the term “comprising” cannot overrule or result in the ignoring of a specific limitation present in the claim. Namely, in the present claims, claim 1 clearly states:

“wherein the matting agent is a (meth)acrylate copolymer which has been prepared from the following monomers,

- b1) from 50 to 95% by weight of methyl methacrylate
- b2) from 5 to 50% by weight of C₁-C₆-alkyl acrylates
- b3) from 0.01 to less than 0.5% by weight of a crosslinking monomer and/or graft-linking agent having two or more ethylenically unsaturated radicals capable of free-radical polymerization,
- b4) from 0 to 20% by weight of one or more other, non-crosslinking ethylenically unsaturated monomers capable of free-radical polymerization,

where the entirety of the constituents b1) and b2) and, where appropriate, b3)
and/or b4) gives 100% by weight,” (Emphasis added)

Thus, while the overall moulding composition can contain other constituents (due to the presence of the transitional phrase “comprising”, the matting agent CANNOT contain anything other than components b1), b2), b3) or b4), since they must add up to 100% by weight of the matting agent. Thus, the fillers present in the crosslinked polymer of Yang cannot be present in the present invention. Yang specifically requires the presence of these fillers in order to provide visual differentiation between their crosslinked polymer component and their thermoplastic matrix, thus giving the required mineral-like or granite-like appearance. To suggest that the composition of Yang anticipates the present invention or that their removal to result in the composition of the present invention would be obvious, is to suggest removing one of the unique and inventive properties of Yang, thus destroying Yang’s invention. A rejection of the present claims cannot be based on such a deconstruction of the prior art teachings.

As the Examiner is well aware, the presence or absence of a filler has significant impact on the properties of the resulting compositions. Thus, one of ordinary skill in the art would have no reason to modify the compositions of Yang ‘612 to remove the filler from the crosslinked particles, nor to alter the other parts of the composition to meet the present invention requirements.

Further, Yang ‘612 teaches away from the low level of crosslinking agent of the present invention (0.01-less than 0.5%) at column 10, beginning at line 21, where Yang ‘612 states that “if the crosslinking agent is too low, that is, below about 0.5%, the crosslinked polymer particles may ‘smear’ into thermoplastic matrix material after multiple passes during extrusion, resulting in blurred or non-differentiated mineral-like appearance.” The reference further states that the crosslinker is preferably present in amounts from 0.5 to 5%, more preferably from 1 to 4%. This cannot suggest the present invention which requires that the crosslinking agent in the matting agent must be less than 0.5% (claim 1), preferably from

Application No. 10/579,843
Reply to Office Action of June 18, 2009

0.05 to 0.49% (claim 13), and more preferably from 0.1 to 0.4 % (claim 14). As such, Yang '612 cannot render the present invention anticipated nor obvious and the rejections should be withdrawn.

The provisional rejection of claims 1, 2, 5, 10, 11, 13 and 14 for obviousness type double patenting over claims 24-41 and 43-46 of copending application 10/575,929 is believed to be obviated by the accompanying Terminal Disclaimer, and should thus be withdrawn.

Applicants submit that the application is now in condition for allowance and early notification of such action is earnestly solicited.

Respectfully submitted,

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